

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

WILLIAM R. KILLEBREW, TIM WOODS,
FRED PARRISH, and JAMES R. VEST
Plaintiffs

V.

NO. 4:95CV355-B-B

THE CITY OF GREENWOOD, MISSISSIPPI; et al.
HARRY L. SMITH, Individually and in
his Official Capacity as Mayor of
the City of Greenwood, Mississippi;
JOHNNY JENNINGS, JO CLAIRE SWAYZE,
LARRY THAMES, SHERIEL PERKINS, ARANCE
WILLIAMSON, DAVID L. JORDAN and CARL
PALMER, Individually and in their
Official Capacities as Members of the
City Council of the City of Greenwood,
Mississippi; GEORGE McCain, Individually
and in his Official Capacity as Fire
Chief of the City of Greenwood, Mississippi;
and CIVIL SERVICE COMMISSION OF THE
CITY OF GREENWOOD
Defendants

CONSOLIDATED WITH

JUNE JOHNSON et al.
Plaintiffs

V.

No. 4:75-CV-128-B

CITY OF GREENWOOD
Defendant

ALLEAN MYERS
Plaintiff

V.

No. 4:77-CV-43-B

CITY OF GREENWOOD
Defendant

MEMORANDUM OPINION

A bench trial was held in this cause on May 27, 1999, and having duly considered the evidence, the court herein sets forth its findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure. The court announced at the start of the trial that the issues would be bifurcated so that the court would address on that date the issue of the constitutionality of the consent decree and, if the decree was found to be unconstitutional, whether the City of Greenwood should be subject to liability for maintaining a hiring and promotion policy within the City of Greenwood fire department that was based on the mandates of the consent decree. The issue of what damages, if any, the Killebrew plaintiffs may be entitled to was carried forward to another day. The court previously held two hearings in the Killebrew matter on October 20, 1997, and November 4, 1997, at which time the court heard evidence and received exhibits. The evidence presented in those two previous hearings was accepted into the record for purposes of the bench trial held on May 27, 1999.

FINDINGS OF FACT

1. In 1978, Judge William Keady of the United States District Court for the Northern District of Mississippi signed a consent decree in the matter of June Johnson v. City of Greenwood, civil action no. 4:75-CV-128.
2. While not adjudicating the merits of the underlying discrimination claim, Judge Keady noted in the consent decree that members of the black race held only a small percentage of city jobs, and few, if any, had ever held a position higher than entry-level.
3. The consent decree set forth an affirmative action plan that contained racial quotas for hiring and promoting blacks throughout every city department. Said quotas were to be used until such time as the proportion of blacks to whites in each job classification was equal to the proportion of

blacks to whites in the working age population of the City of Greenwood. The consent decree contained further provisions for the active solicitation of applications for city employment from members of the black community.

4. The consent decree stated that the city's long-term goal was the participation of blacks at all levels of its workforce until such time as the proportion of blacks was equal to their respective proportion in the city's labor force. The consent decree pronounced that compliance therewith would be judged on a yearly basis and that the length of the decree would be three years. The consent decree further stated that at any time after three years, the city may move the court for dissolution of the decree, at which time the court would consider whether the basic objectives of the decree had been achieved.

5. Throughout the 1980's, as the mandates of the consent decree took effect, the percentage of blacks employed within the various departments of the City of Greenwood increased substantially. In 1979, blacks held only 38% of the full-time jobs within the City of Greenwood, a large portion of which were in the street and sanitation departments. By 1983, that number had increased to 44%, and blacks were beginning to occupy supervisory positions within most departments. By 1987, blacks held 52% of city jobs, a slight majority. A further change within the City of Greenwood occurred in 1987 when blacks were elected to three out of seven positions on the city council. By 1991, blacks held 60% of the jobs within the City of Greenwood as well as a majority of the seats on the city council (four out of seven). The jobs held by blacks were not limited to entry-level positions, either, as blacks held supervisory positions throughout each department.

6. By way of further example of the changing landscape, in 1975, the City of Greenwood Fire Department employed only five blacks (11% of the department), with no black employed above

the entry-level position of fireman. By 1985, the fire department employed 21 blacks (40% of the department), ten of whom held supervisory positions of Sergeant, Lieutenant, or Captain. By 1995, the fire department employed 31 blacks (56% of the department). Blacks held 24 supervisory positions (59% of the positions above fireman), including the positions of Chief and Assistant Chief.

7. A review of the population statistics for Leflore County¹ reveals that throughout the 1990's, blacks have held a slight majority of the total civilian labor force. In 1991, blacks comprised 52% of the working age population within Leflore County. In 1996, the latest year for which statistics were presented to the court, that number had dropped slightly, so that blacks constituted just 50% of the total civilian labor force.

CONCLUSIONS OF LAW

As stated by the Eleventh Circuit Court of Appeals in Ensley Branch, NAACP v. Seibels:

The Constitution does not guarantee racial parity in public employment; instead, it forbids racial discrimination....By striving for racial parity instead of an end to racial discrimination, these decrees actually promote racial discrimination in contravention of the constitution.

31 F.3d 1548, 1570 (11th Cir. 1994). The court went on to state:

The goal of eliminating discrimination may justify some interim use of affirmative action, but affirmative action selection provisions are themselves a form of discrimination that cannot continue forever.

Id., at 1571.

The 1978 plan adopted by the parties in the Johnson matter and confirmed by Judge Keady included the use of racial quotas to achieve black representation throughout all

¹ Although the consent decree refers to the working age population of the City of Greenwood, the parties have submitted evidence regarding the civilian labor force of Leflore County, which the court finds is an acceptable substitute for statistics relating specifically to the City of Greenwood.

departments and all levels of city employment equal to that of the proportion of blacks in the local working age population. The court finds that quotas are not to rectify employment disparity within the City of Greenwood. Consent decrees cannot be used to maintain employment quotas. United States v. City of Miami, 2 F.3d 1497, 1506 (11th Cir. 1993); see also Cunico v. Pueblo Sch. Dist. No. 60, 917 F.2d 431, 440 (10th Cir. 1990). The only valid purpose of a decree such as this is to remedy the effects of past discrimination. City of Miami, 2 F.3d at 1506. The evidence clearly shows that blacks have achieved statistical equality throughout all levels of city employment in Greenwood. Furthermore, the city council, which sets and/or monitors the employment policies of the city, is controlled by a black majority. The parties have presented no evidence to suggest that there are continuing vestiges of discrimination within the public sector of Greenwood. Without any prior unremedied or current discrimination, there is no constitutional basis for a consent decree. Brunet v. City of Columbus, 1 F.3d 390, 409 (6th Cir. 1993), cert. denied, 510 U.S. 1164, 127 L. Ed. 2d 540 (1994). Furthermore, courts will not assume that the effects of past discrimination in public employment have endured or will endure indefinitely. Absent findings that past discrimination continues to taint the city's employment procedures, affirmative action will no longer be legitimate. Ensley Branch, 31 F.3d at 1575.

The Constitution demands that race conscious affirmative action programs end as soon as their purposes are accomplished. Id. at 1570; see Edwards v. City of Houston, 37 F.3d 1097, 1113-1114 (5th Cir. 1994). The court finds that the consent decree in this case has long outlived its usefulness. By 1991, the percentage of blacks throughout all departments of the City of Greenwood exceeded that of blacks within the local working age population and blacks were well-represented in the upper-levels of each department. Furthermore, since 1991, blacks have held a majority of the seats on the city council. The underlying reasons for the consent decree

simply no longer exist. For the City of Greenwood to continue the practice of the consent decree at this point constitutes reverse racial discrimination. Accordingly, the court finds that the consent decree entered in 1978 in the matter of Johnson v. City of Greenwood should be dissolved. The court further finds that by no later than 1991, the consent decree had become unconstitutional, as the goals of the consent decree had clearly been met and the makeup of both the city council and the various city departments was of sufficient racial balance so as to prevent any further discrimination.

Having found that the goals of the consent decree were met by 1991 and therefore the affirmative action plan set forth in the decree was no longer valid, any continued reliance on the consent decree by the City of Greenwood in establishing and maintaining employment policies after 1991 was totally unnecessary and not contemplated by the court in 1978. Of particular relevance to the court is the fact that the decree itself impliedly instructed the city to seek to have the decree dissolved once the goals had been met. To this day, the city council has stubbornly refused to seek guidance from the court regarding the continuing validity of the decree,² choosing instead to use the decree as a shield to protect their continued practice of unlawful reverse discrimination. However, while the presence of a consent decree containing an affirmative action plan may constitute a legitimate, non-discriminatory reason for employment decisions so long as the decree is valid, a decree that is no longer valid will not serve as a defense to claims of employment discrimination where the plaintiff shows that the defendant's reliance on the consent decree is merely a pretext for unlawful discrimination. See Johnson v. Transportation Agency,

² It was the Mayor acting of his own accord, not the city council, who recently filed a motion in Johnson to determine whether the consent decree remains valid. The city council's lack of action is even more appalling in light of this court's memorandum opinion of October 29, 1997, in which the court warned that a prudent city council would ask the court for guidance on the continuing validity of the decree.

480 U.S. 616, 94 L. Ed. 2d 615 (1987); see generally In re Birmingham Reverse Discrimination Employment Litigation, 833 F.2d 1492, 1501 (11th Cir. 1987), aff'd, 409 U.S. 755 (1989).

Considering that the goals of the decree had clearly been met, the decree stated that it was to be of limited duration, and the city was encouraged by the decree to seek its dissolution once the goals had been met, yet the city took no action to determine the validity of the decree, the court finds that the city's continued reliance on the consent decree is unconstitutional and that the city should be held liable for any unlawful employment discrimination that occurred after 1991.³

³ The court notes that it is not making a finding that the Killebrew plaintiffs have been the victims of unlawful employment discrimination. The City of Greenwood asserts that the employment decisions concerning the Killebrew plaintiffs were not based on race, and thus the Killebrew plaintiffs must still prove their case of employment discrimination. At this time, the court is simply holding that the City of Greenwood may not rely upon the consent decree as a defense to any claims of employment discrimination that occurred after 1991.

CONCLUSION

For the foregoing reasons, the court finds that the goals of the consent decree entered in Johnson v. City of Greenwood were met by 1991, that the consent decree should be dissolved, and that the City of Greenwood may not rely upon the consent decree as a defense to any employment discrimination that occurred after 1991. The only relevant issue in Johnson and Myers, cause numbers 4:75-CV-128-B and 4:77-CV-43-B, respectively, was the continuing validity of the consent decree and that issue having been fully and finally resolved, the court finds that cause numbers 4:75-CV-128-B and 4:77-CV-43-B should be dismissed with prejudice. An order will issue accordingly.

THIS, the ____ day of April, 2001.

NEAL B. BIGGERS, JR.
CHIEF JUDGE